

Constitutional Defense Council

Public Lands Policy Coordination Office

Olmsted Room
Utah State Capitol Complex—Senate Building
January 9, 2013
2:00 p.m.

Minutes

Attendees:

Members:

Greg Bell, Lt. Governor
Mike Noel, Representative, Utah House
Brian King, Representative, Utah House
Mike McKee, Commissioner, Uintah County
Leonard Blackham, UDAF
Mike Styler, DNR
Larry Ellertson, Commissioner, Utah County
Kevin Carter, SITLA
Leland F. Pollock, proxy for Clare Ramsey,
Commissioner, Garfield County

Staff:

John Harja, PLPCO
Harry Souvall, Attorney General
Kathy Davis, Attorney General
Tony Rampton, Attorney General
Craig Rasmussen, PLPCO
Sindy Smith, PLPCO
Mark Ward, Utah Association of Counties
Eric Ellis, Lt. Governor's Office

Guests:

Tim Donaldson, USOE
Margaret Bird, USOE
John Ruple, U of U
Ken Ivory, Representative, Utah House
Steve Erickson, Great Basin Water Network

Welcome and Introductions

Representative Mike Noel called the meeting to order at 10:00 a.m. and welcomed everyone.

Approval of the Minutes

Members unanimously approved November 13, minutes.

Proposed Legislation—Federal Law Enforcement

Mark Ward reported on the federal law enforcement legislation.

The discussion covered the following items:

- The bill rests on the Federal Land Policy and Management Act's (FLPMA) expressly referenced sections and subsections. FLPMA requires the Secretary of the Interior, on Bureau of Land Management (BLM) lands, to rely on local law enforcement to the maximum extent feasible. The bill says the State will not recognize the law enforcement

efforts of the BLM's Law Enforcement Officers (LEOs) unless the Secretary of the Interior shows that local law enforcement reliance has been maxed out and that the appropriate contact has been made.

- Part of the legislation amends a section of the code that has to do with impersonation of an officer and authorizes sheriffs to arrest Forest Protection Officers (FPOs). The bill takes a stand against the Federal Government enforcing assimilated state laws. There are two distinct classes of LEOs. The bill gives deference to LEOs' enforcement of federal statutory law, but says no to LEOs' attempts to enforce state law and says no to FPOs' attempts to act as LEOs.
- There will likely be litigation over this bill, which will test the limits of jurisdiction.

Discussion:

The discussion covered the following comments:

- Counties have experienced an increase in federal arrests over the past twenty years, which is a problem not only for the sheriffs, but also for the individuals who are charged. Representative Noel's first bill, 4-5 years ago, addressed the same issue: Who is the chief law enforcement officer within a county?
- Forest Protection Officers (FPOs) are not law enforcement officers, but they have been arresting people.
- The better question might be, "Is the Federal Government able to, by rule, set up violations?" The Forest Service has successfully defended challenges to their rules. The question that is out there is on the BLM.
- Garfield County supports this legislation. In Garfield County the Federal Government has closed roads without authority.
- Representative Ivory remarked that, "the only reason the Federal Government is escalating efforts in doing these things is because the State has tolerated it—because jurisdiction that the state doesn't know or exercise is no different than jurisdiction the state doesn't have."
- Representative King suggested that additional information would be useful and recommended that the CDC invite U.S. Attorney David Barlow to the next CDC meeting.

Proposed Legislation—Taxation of Private Property under ESA Restrictions

Representative Mike Noel indicated that he opened a bill file on the prairie dogs' detrimental impact on private property values in Iron County. The impact not only affects the individual land owner, but also the county's ability to collect property taxes.

Discussion:

Overall comments included:

- What must be shown is a significant amount of utility to property before the Federal Government will consider it a taking, like 80% or more. If Iron County can demonstrate that the tax value is zero, it may be Iron County has a taking's claim against the Federal Government.
- Iron County is having some existing biological data looked at that may answer the intrastate species question.

Funding—Kane County

Representative Mike Noel mentioned a recent Client Committee meeting, specifically, Kane County's legal fees. Representative Noel asked members, "Does the State make explicit requests of Kane County attorneys?"

Discussion:

The discussion covered the following remarks:

- Harry Souvall pointed out that the State works cooperatively with Kane County's attorneys. Kane County's attorneys are focusing on Kane County matters—establishing the law. Kane County will be making rules and law that will govern all the cases as the State moves forward. Kane County is going to be exempted from the stay.
- Representative Noel stated that Kane County is willing to pay a large percentage of its legal fees, but will need continued financial support.
- Representative Noel noted that he would get the numbers, discuss the matter with Kathleen Clarke, and hopefully, get some funds appropriated.

Other Business

Utah Geological Survey—Snake Valley Wells Monitoring Funds

Mike Styler informed members that the well monitoring that Utah Geological Survey (UGS) does in Snake Valley may be put on hold due to lack of funds from SITLA's Land Exchange Distribution Account.

Discussion:

The discussion included the following comments:

- Kevin Carter described SITLA's distribution formula and indicated that distribution funds are finite. Coal and gas production continually decrease. Monies come from the coal bed and methane gas in Carbon and Emery Counties and the coal from the Wasatch Plateau, which SITLA acquired in a land exchange. Coal production depends on where the coal companies are mining. Currently, production is down because coal companies are off state lands. Natural gas prices are also low. The net effect, everybody below the million dollars, which comes off the top, is not getting any distribution.
- Representative Mike Noel suggested Mike Styler secure money from the general fund and requested the CDC recommend the legislature and appropriation's Chair to find a mechanism to restore funds for well monitoring in Snake Valley. Kevin Carter moved to second the Motion. The Motion carried unanimously.

Request to Up-Date the Study of Jurisdiction over Federal Areas within the States from 1956

Representative Mike Noel asked if counsel would up-date the 1956 Jurisdictional Study so Governor Herbert is able to look at this bill before a veto.

Discussion:

Overall comments included:

- Representative Mike Noel stated that the bill asserts the State of Utah holds authority over law enforcement in the state.

- Representative Ken Ivory remarked that the Jurisdictional Study looked at a variety of areas and questioned who has jurisdiction. The State should simply say, “How did jurisdiction change constitutionally as it was recognized in the study? Jurisdiction is only ceded or branded by the State or Federal Government. Jurisdiction is found in the exercise rather than in the theorizing.”
- Lt. Governor Bell requested Kathy Davis review the Jurisdictional Study.

Iron County Road Up-Date

Mark Ward clarified the Iron County roads negotiation process. The central discussion items included:

- All of the stakeholders are in agreement, and everybody has signed off on all the roads.
- The BLM Director, Juan Palma, is very supportive of formalizing the negotiation in a two-step process that would 1) result in a congressional bill and 2) grant permanent right-of-way title on the roads that should be open. The BLM is commencing a Title V analysis under a Categorical Exclusion.
- Each road is owned jointly by the state and the county. The roads would be surrendered in two ways. The county commission would schedule a public hearing as well as provide a comment period. The county would formerly relinquish the roads to be given up. Governor Herbert would then sign a Quit Claim Deed.
- This approach is attractive because it takes the Department of Justice out of the picture. The Department of Justice can be very demanding on the proof it insists on.

Next Meeting

The next meeting is not scheduled.

Public Comment

No public comment.

Adjourn

The meeting was adjourned at approximately 3:15 p.m.